

AMENDED IN SENATE APRIL 21, 2003

SENATE BILL

No. 285

Introduced by Senator Speier

February 19, 2003

An act to amend Section 18533 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 285, as amended, Speier. Income taxes: innocent spouse.

Existing income tax laws provide that an individual who made a joint return may elect to be relieved from liability for additional taxes and penalties if, among other things, that individual did not know of, and had no reason to know of, an understatement of tax attributable to erroneous items of the other individual filing the joint return.

This bill would provide ~~a rebuttable presumption~~ that, if an individual has been granted relief from specified joint and several liability provisions of federal income tax laws, that individual is also entitled to relief under California income tax laws, *if specified conditions are satisfied*.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 18533 of the Revenue and Taxation
- 2 Code is amended to read:
- 3 18533. (a) (1) Notwithstanding subdivision (a) and the first
- 4 sentence of subdivision (b) of Section 19006:

1 (A) An individual who has made a joint return may elect to seek
2 relief under the procedures prescribed under subdivision (b), and

3 (B) If the individual is eligible to elect the application of
4 subdivision (c), the individual may, in addition to any election
5 under subparagraph (A), elect to limit the individual's liability for
6 any deficiency with respect to the joint return in the manner
7 prescribed under subdivision (c).

8 (2) Any determination under this section shall be made without
9 regard to community property laws.

10 (b) (1) Under procedures prescribed by the Franchise Tax
11 Board, if—

12 (A) A joint return has been made under this chapter for a
13 taxable year,

14 (B) On that return there is an understatement of tax
15 attributable to erroneous items of one individual filing the joint
16 return,

17 (C) The other individual filing the joint return establishes
18 that in signing the return he or she did not know of, and had no
19 reason to know of, that understatement,

20 (D) Taking into account all facts and circumstances, it is
21 inequitable to hold the other individual liable for the deficiency
22 in tax for that taxable year attributable to that understatement,
23 and

24 (E) The other individual elects (in the form and manner as
25 the Franchise Tax Board may prescribe) the benefits of this
26 subdivision not later than the date that is two years after the date
27 the Franchise Tax Board has begun collection activities with
28 respect to the individual making the election,
29 then the other individual shall be relieved of liability for tax
30 (including interest, penalties, and other amounts) for that taxable
31 year to the extent that the liability is attributable to that
32 understatement.

33 (2) If an individual who, but for subparagraph (C) of paragraph
34 (1), would be relieved of liability under paragraph (1), establishes
35 that in signing the return the individual did not know, and had no
36 reason to know, the extent of the understatement, then the
37 individual shall be relieved of liability for tax (including interest,
38 penalties, and other amounts) for that taxable year to the extent that
39 the liability is attributable to the portion of the understatement of
40 which that individual did not know and had no reason to know.

(3) For purposes of this subdivision, the term “understatement” has the meaning given to that term by Section 6662(d)(2)(A) of the Internal Revenue Code.

(c) (1) Except as provided in this subdivision, if an individual who has made a joint return for any taxable year elects the application of this subdivision, the individual’s liability for any deficiency ~~which~~ *that* is assessed with respect to the return ~~shall~~ *may* not exceed the portion of the deficiency properly allocable to the individual under subdivision (d).

(2) Except as provided in clause (ii) of subparagraph (A) of paragraph (3) or subparagraph (C) of paragraph (3), each individual who elects the application of this subdivision shall have the burden of proof with respect to establishing the portion of any deficiency allocable to that individual.

(3) (A) (i) An individual shall only be eligible to elect the application of this subdivision if—

(I) At the time the election is filed, that individual is no longer married to, or is legally separated from, the individual with whom that individual filed the joint return to which the election relates, or

(II) That individual was not a member of the same household as the individual with whom the joint return was filed at any time during the 12-month period ending on the date the election is filed.

(ii) If the Franchise Tax Board demonstrates that assets were transferred between individuals filing a joint return as part of a fraudulent scheme by those individuals, an election under this subdivision by either individual shall be invalid (and subdivision (a) and the first sentence of subdivision (b) of Section 19006 shall apply to the joint return).

(B) An election under this subdivision for any taxable year shall be made not later than two years after the date on which the Franchise Tax Board has begun collection activities with respect to the individual making the election.

(C) If the Franchise Tax Board demonstrates that an individual making an election under this subdivision had actual knowledge, at the time the individual signed the return, of any item giving rise to a deficiency (or portion thereof) ~~which~~ *that* is not allocable to the individual under subdivision (d), that election ~~shall~~ *may* not apply to that deficiency (or portion). This subparagraph ~~shall~~ *does*

1 not apply where the individual with actual knowledge establishes
2 that the individual signed the return under duress.

3 (4) (A) Notwithstanding any other provision of this
4 subdivision, the portion of the deficiency for which the individual
5 electing the application of this subdivision is liable (without regard
6 to this paragraph) shall be increased by the value of any
7 disqualified asset transferred to the individual.

8 (B) For purposes of this paragraph—

9 (i) The term “disqualified asset” means any property or right
10 to property transferred to an individual making the election under
11 this subdivision with respect to a joint return by the other
12 individual filing the joint return if the principal purpose of the
13 transfer was the avoidance of tax or payment of tax.

14 (ii) (I) For purposes of clause (i), except as provided in
15 subclause (II), any transfer that is made after the date that is one
16 year before the date on which the first notice of proposed
17 assessment under Article 3 (commencing with Section 19031) of
18 Chapter 4 is sent shall be presumed to have as its principal purpose
19 the avoidance of tax or payment of tax.

20 (II) Subclause (I) ~~shall~~ *does* not apply to any transfer pursuant
21 to a decree of divorce or separate maintenance or a written
22 instrument incident to that decree or to any transfer that an
23 individual establishes did not have as its principal purpose the
24 avoidance of tax or payment of tax.

25 (d) For purpose of subdivision (c)—

26 (1) The portion of any deficiency on a joint return allocated to
27 an individual shall be the amount ~~which~~ *that* bears the same ratio
28 to the deficiency as the net amount of items taken into account in
29 computing the deficiency and allocable to the individual under
30 paragraph (3) bears to the net amount of all items taken into
31 account in computing the deficiency.

32 (2) If a deficiency (or portion thereof) is attributable to—

33 (A) The disallowance of a credit, or

34 (B) Any tax (other than tax imposed by Section 17041 or
35 17062) required to be included with the joint return, and the item
36 is allocated to one individual under paragraph (3), that deficiency
37 (or portion) shall be allocated to that individual. Any item so
38 allocated ~~shall~~ *may* not be taken into account under paragraph (1).

39 (3) For purposes of this subdivision—



(A) Except as provided in paragraphs (4) and (5), any item giving rise to a deficiency on a joint return shall be allocated to individuals filing the return in the same manner as it would have been allocated if the individuals had filed separate returns for the taxable year.

(B) Under rules prescribed by the Franchise Tax Board, an item otherwise allocable to an individual under subparagraph (A) shall be allocated to the other individual filing the joint return to the extent the item gave rise to a tax benefit on the joint return to the other individual.

(C) The Franchise Tax Board may provide for an allocation of any item in a manner not prescribed by subparagraph (A) if the Franchise Tax Board establishes that the allocation is appropriate due to fraud of one or both individuals.

(4) If an item of deduction or credit is disallowed in its entirety solely because a separate return is filed, the disallowance shall be disregarded and the item shall be computed as if a joint return had been filed and then allocated between the spouses appropriately.

(5) If the liability of a child of a taxpayer is included on a joint return, that liability shall be disregarded in computing the separate liability of either spouse and that liability shall be allocated appropriately between the spouses.

(e) (1) In the case of an individual who elects to have subdivision (b) or (c) apply—

(A) (i) The determination of the Franchise Tax Board as to whether the liability is to be revised as to one individual filing the joint return shall be made not less than 30 days after notification of the other individual filing the joint return.

(ii) Any action taken under this section shall be treated as though it were action on a protest taken under Section 19044 and shall become final upon the expiration of 30 days from the date that notice of the action is mailed to both individuals filing the joint return, unless, within that 30-day period, the individual making the election under subdivision (b) or (c) appeals the determination to the board as provided in clause (iii) or the other individual filing the joint return appeals the determination to the board as provided in Section 19045.

(iii) The individual making the election under subdivision (b) or (c) may appeal the determination of the Franchise Tax Board of the appropriate relief available to the individual under this section

1 if that appeal is filed during the 30-day period prescribed in clause
2 (ii) and the appeal shall be treated as an appeal to the board under
3 Section 19045. Notwithstanding the preceding sentence, the
4 individual making the election under subdivision (b) or (c) may
5 appeal to the board at any time after the date ~~which~~ *that* is six
6 months after the date the election is filed with the Franchise Tax
7 Board and before the close of the 30-day period prescribed in
8 clause (ii).

9 (B) Except as otherwise provided in Section 19081 or 19082,
10 no levy or proceeding in court shall be made, begun, or prosecuted
11 against the individual making an election under subdivision (b) or
12 (c) for collection of any assessment to which the election relates
13 until the expiration of the 30-day period described in clause (ii) of
14 subparagraph (A), or, if an appeal to the board has been filed under
15 clause (iii) or Section 19045, until the decision of the board has
16 become final.

17 (2) The running of the period of limitations in Section 19371
18 on the collection of the assessment to which the petition under
19 subparagraph (A) of paragraph (1) relates shall be suspended for
20 the period during which the Franchise Tax Board is prohibited by
21 subparagraph (B) of paragraph (1) from collecting by levy or a
22 proceeding in court and for 60 days thereafter.

23 (3) (A) Except as provided in subparagraph (B),
24 notwithstanding any other law or rule of law (other than Article 6
25 (commencing with Section 19441) of Chapter 6), a credit or refund
26 shall be allowed or made to the extent attributable to the
27 application of this section.

28 (B) In the case of any election under subdivision (b) or (c), if
29 a decision of the board in any prior proceeding for the same taxable
30 year has become final, that decision shall be conclusive except
31 with respect to the qualification of the individual for relief ~~which~~
32 *that* was not an issue in that proceeding. The exception contained
33 in the preceding sentence ~~shall~~ *does* not apply if the board
34 determines that the individual participated meaningfully in the
35 prior proceeding.

36 (f) Under procedures prescribed by the Franchise Tax Board,
37 if taking into account all the facts and circumstances, it is
38 inequitable to hold the individual liable for any unpaid tax or any
39 deficiency (or any portion of either), and relief is not available to

1 the individual under subdivision (b) or (c), the Franchise Tax
2 Board may relieve the individual of that liability.

3 (g) (1) The Franchise Tax Board may prescribe regulations
4 providing methods for allocation of items other than the methods
5 under paragraph (3) of subdivision (d).

6 (2) It is the intent of the Legislature that, in construing this
7 section and any other sections ~~which~~ *that* are specifically
8 cross-referenced in this section, any regulations that may be
9 promulgated by the Secretary of the Treasury under Section 6015
10 of the Internal Revenue Code, as amended by Public Law 105-206,
11 shall apply to the extent that those regulations do not conflict with
12 this section or with any regulations that may be promulgated by the
13 Franchise Tax Board.

14 (h) (1) Except as provided in paragraph (2), the amendments
15 made by the act adding this subdivision shall apply to any liability
16 for tax arising after the effective date of the act adding this
17 subdivision and any liability for tax arising on or before that date
18 but remaining unpaid as of that date.

19 (2) The four-year period under subparagraph (E) of paragraph
20 (1) of subdivision (b) or subparagraph (B) of paragraph (3) of
21 subdivision (c) ~~shall~~ *does* not expire before the date ~~which~~ *that* is
22 four years after the date of the first collection activity after the
23 effective date of the act adding this subdivision.

24 ~~(i) Notwithstanding any other law, if an individual who made~~
25 ~~a joint return has been granted relief under Section 6015 of the~~
26 ~~Internal Revenue Code, relating to joint and several liability on a~~
27 ~~joint return, it is rebuttably presumed that individual is also~~
28 ~~entitled to relief from taxes and penalties under this section.~~

29 *(i) (1) An individual who has made a joint return and has been*
30 *granted relief under Section 6015 of the Internal Revenue Code,*
31 *relating to joint and several liability with respect to a federal joint*
32 *income tax return, shall be eligible for relief under this section if*
33 *all of the following conditions are satisfied:*

34 *(A) The individual requests relief under this section.*

35 *(B) The facts and circumstances that apply to the*
36 *understatement and liabilities for which the relief is requested are*
37 *the same facts and circumstances that applied to the*
38 *understatement and liabilities for which that individual was*
39 *granted relief under Section 6015 of the Internal Revenue Code.*

1 (C) The individual requesting relief under this subdivision
2 furnishes the Franchise Tax Board with a copy of the federal
3 determination granting that individual relief under Section 6015
4 of the Internal Revenue Code.

5 (2) This subdivision does not apply if, prior to the expiration of
6 the 30-day period described in clause (i) of subparagraph (A) of
7 paragraph (1) of subdivision (e), the other individual that filed the
8 joint return for which the relief is requested under this subdivision
9 submits information to the Franchise Tax Board that indicates that
10 relief should not be granted. For purposes of this paragraph,
11 “information that indicates that relief should not be granted” is
12 limited to the following:

13 (A) Information that indicates that the facts and circumstances
14 that apply to the understatement and liabilities for which the relief
15 is requested are not the same facts and circumstances that applied
16 to the understatement and liabilities for which that individual was
17 granted relief under Section 6015 of the Internal Revenue Code.

18 (B) Information that indicates that there has not been a federal
19 determination granting relief under Section 6015 of the Internal
20 Revenue Code or that the federal determination granting relief
21 under Section 6015 of the Internal Revenue Code has been
22 modified, altered, withdrawn, canceled, or rescinded.

23 (j) If, prior to the date the Franchise Tax Board issues its
24 determination with respect to a request for relief under this section,
25 the individual requesting relief demonstrates to the Franchise Tax
26 Board that a request for relief has been filed with the Internal
27 Revenue Service pursuant to Section 6015 of the Internal Revenue
28 Code and demonstrates that the request for relief involves the same
29 facts and circumstances as the request for relief that is pending
30 before the Franchise Tax Board, the Franchise Tax Board may not
31 issue its determination until a final federal determination with
32 respect to the request for relief filed under Section 6015 of the
33 Internal Revenue Code has been entered or issued.

34 (k) The provisions of subdivisions (i) and (j) shall apply to both
35 of the following:

36 (1) Any tax liability that occurs after the effective date of the act
37 adding subdivisions (i) and (j) to this section.

- 1 (2) *Any unpaid tax liability that occurred prior to the effective*
2 *date of the act adding subdivisions (i) and (j) to this section.*

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